The Future Global Governance of Space Security - International Law and Armed Conflicts Involving Space Technology

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Technological Challenges for the Humanitarian Legal Framework

- International Law and technology
- IHL – embedded into International Law – means and methods of warfare
- IHL – applies to novel types of weaponry and new technological developments

but......
- is (usually) ‘one war late’
- How to react in law to technological challenges on the battlefield?
- What constitutes ‘the battlefield’?
- Are we (should we be) applying 20\textsuperscript{th} Century laws to 21\textsuperscript{st} Century technology?
- Are the IHL laws applicable? relevant? appropriate? sufficient? clear?
- What ‘shapes’ what?
Technological ‘Challenges’ to IHL include....

• cyber technology
• remote-controlled weapons systems technology
• robotics technology
• space technology
• others?
Opportunities and Risks

- Potential to minimize casualties
- Greater selectivity => an obligation to use?
- Non-lethal / less-lethal means of warfare

but......

- Increasing trend to ‘long distance warfare’
  => a disconnect
- It’s ‘too easy’
- More attacks?
- A lower threshold?
- Increased destructive capabilities
- More likely to ‘render death inevitable’
- Moral and ethical challenges – moral disengagement
- Legal uncertainties
Outer Space Treaty – Principles Relevant to Military Uses

- Freedom to explore and use / free access for all
- ‘province of mankind’ / ‘common heritage of mankind’
- No appropriation / claims of sovereignty
- International law applies (including UN Charter)
- Interests of maintaining international peace and security
- No nuclear weapons / weapons of mass destruction
- ‘Peaceful Purposes’
- State responsibility / liability for ‘national activities in outer space’
- International cooperation / keeping UN informed
Military Uses of Outer Space – a reality

- **Peaceful Purposes**
  - ‘Non-military’ v ‘non-aggressive’
    - a redundant argument?

- **Operation Desert Storm – the first ‘Space War’**
  - Kosovo, Afghanistan, Iraq, Libya etc

- **Military satellites / space assets – an ‘integrated battle platform’**

- **Commercial satellites**
  - ‘dual use’ satellites
    - Communications
    - GPS technology
    - Remote sensing

- **Weapons systems**
  - Earth => Space - missile defence shield / ballistic missiles / ASATS
  - Space => Space
  - Space => Earth

- ‘Fourth Territory’?
Space Security – International / National Policy

- Activities of the Major Space Faring States
  - A ‘Space Pearl Harbour’

- A Space Arms Race? – UNGA Resolutions
  - the weaponisation of space?

- Draft 2008 Treaty to Prevent Weapons

- TCBMs – Draft International Code of Conduct
A Hypothetical? – An Application of IHL Principles

• International law applies in outer space
• No ‘territorial’ limitation to *jus in bello*
  – IHL Principles apply
    • in combat zone
    • where acts cause (direct) effects?
• Outer Space used for
  – ‘passive’ military activities
  – as an ‘active’ theatre of warfare?
Application of IHL Principles

- Principles of
  - Distinction
  - Military Objective
  - Proportionality
    - appropriate for actions in outer space?

- Can a satellite be a legitimate target of war?
  - military satellites
  - ‘dual-use’ satellites

- Effects?
  - communities / States / regions etc reliant on satellite technology
Concluding Comments

- Space technology already used to conduct armed conflict
- Increasing likelihood that space may become a ‘theatre of war’
- Legal ‘status’ of satellites – legitimate military target?
- How to apply / adapt the *jus in bello*?
- Need for specific standards
  - Definitions – ‘space’ / ‘peaceful purposes’ / ‘military uses’
- Need to adhere to the collective ‘humanity’ principles of space law and IHL